Ruling 94-10

Vermont Department of Taxes

Date: November 7, 1994

Written By: Danforth Cardozo, III, Attorney for the Department

Approved By: Betsy Anderson, Commissioner of Taxes

You have requested a formal ruling with respect to the following facts as contained in your letter to Commissioner Joyce Errecart of January 21, 1994:

Your clients, [A and B], are husband and wife respectively, and have real estate which is enrolled in the Working Farm Tax Abatement Program (WFTAP), 32 V.S.A. § 3764 et. seq. [A] is actively engaged in farming. [B] is [a full time employee at a local business] but also works on the farm at night and on weekends. [A and B] have assets estimated to have a fair market value in excess of $600,000 and thus wish to establish trusts both for the purpose of probate avoidance and to reduce estate taxes. [A and B] plan to each establish separate revocable grantor trusts in which the grantor is the sole trustee and also the sole beneficiary during his or her lifetime. Upon the death of the first to die, the survivor will be the sole beneficiary of the decedent's trust and at the survivor's death the property will pass outright to the grantor's children. Because of the composition of their assets, [A and B] would like to transfer the real estate involved in the farming activity to [B]'s (the wife's) trust. Since the trusts are grantor trusts, all of the trusts' income would be includable on the grantors' federal income tax return pursuant to 26 U.S.C. § 674 - 677.

You ask, under the following scenarios, 1) whether, upon transfer, the real estate currently owned by [A and B] would be disqualified from WFTAP, and 2) whether transfer of the real estate would be subject to the land use change tax pursuant to 32 V.S.A. § 3757. The Department assumes for the purposes of this ruling that by using the word "transfer" you mean that there is a conveyance or transfer of title to the real estate of [A and B] by deed to a trust or to [A and/or B] as grantees in a different legal capacity:
1. The transfer of the real estate from [A and B] to [B]'s grantor trust for [B]'s benefit.
2. The transfer of the real estate from [A and B] to [A]'s grantor trust for [B]'s benefit.
3. The transfer of a one-half interest of the real estate to each trust.
4. The transfer of the real estate from [A and B] as joint tenants with the right of survivorship to [A and B] as tenants in common.

I. DISQUALIFICATION FROM WFTAP. In each of the four scenarios listed above, the issue is whether the property, after transfer, is eligible as defined in 32 V.S.A. § 3764(3) to be enrolled under 32 V.S.A. § 3766. To be eligible, property must be owned by a farmer or leased to a farmer under a written lease for a term of three

years or more. Thus, if the grantee under any of the scenarios listed above fits the definition of a farmer or leases the land to a farmer as that term is defined in under 32 V.S.A. § 3764(5), and the other requirements for enrollment in WFTAP are met, then the transfer does not disqualify the property from enrollment in WFTAP.

II. II. LAND USE CHANGE TAX - REPAYMENT OF BENEFITS. To clarify the discussion that follows, it is helpful to note that the land use change tax imposed by 32 V.S.A. § 3757 does not apply to property enrolled in WFTAP. The land use change tax applies only to land enrolled in the use value appraisal programs for agricultural land or managed forest land. When property enrolled in WFTAP is converted to a nonfarm use, the WFTAP program provides for a repayment of benefits paid by the state for the five most recent tax years. 32 V.S.A. § 3774(a). When this rollback of benefits is billed by the Department, it is sometimes denominated a land use change tax.

The conveyance by deed of property enrolled in WFTAP is a "conversion to nonfarm use" that will require the repayment of benefits unless the transfer is described in 32 V.S.A. § 3764(2) (second)(A) through (second)(C). These statutes describe certain conveyances that are not considered to be a conversion to nonfarm use.
The exceptions in 32 V.S.A. § 3764(second)(B) and (second)(C) do not apply to the facts you have described. However, the transfer might fall within 32 V.S.A. § 3764(second)(A), which provides that the conveyance of property to a farmer who maintains the property's status as eligible property is not considered to be a conversion to nonfarm use that triggers the repayment of benefits. If the grantor trust meets the definition of farmer in 32 V.S.A. § 3764(5), the transfer of the enrolled property to the trust will not trigger the penalty in 32 V.S.A. § 3774(a).

32 V.S.A. § 3764(5) does not preclude a grantor trust from being a "farmer" for purposes of WFTAP. A grantor trust is a "person" for purposes of 32 V.S.A. § 3752 and it is not a "corporation or other business entity" for purposes of 32 V.S.A. § 3764(5). Therefore, the trust will qualify as a farmer if at least one-half of the annual gross income of the trust is derived from the business of farming, as that term is defined in Reg. 1. 175-3 issued under the Internal Revenue Code of 1954.

A copy of the statutes cited in this ruling is attached to and made a part of this ruling.

This ruling is issued solely to your firm and is limited to the facts presented as affected by current statutes and regulations. Other taxpayers may refer to this ruling to determine the Department's general approach, but the Department will not be bound by this ruling in the case of any other taxpayer or in the case of any change in the relevant statute or regulations.